DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor*

FEDERAL COURT (KUALA LUMPUR) — SPECIAL CASE NO 02 OF 2001
AHMAD FAIRUZ CJ (MALAYA), HAIDAR FCJ AND DENIS ONG JCA
6 FEBRUARY 2002

Constitutional Law — *Constitution — Federal Constitution — Commencement of action by plaintiff in High Court — Plaintiff subsequently appointed as Regent of State of Selangor to exercise functions as Sultan — Whether plaintiff was Ruler for purposes of arts 181, 182 and 183 of the Federal Constitution — Definition of 'Ruler' in art 160 of Federal Constitution — Federal Constitution arts 160, 181, 182, 183*

Statutory Interpretation — *Construction of statutes — Purposive approach — Ambiguity — Literal approach to interpretation gave rise to different interpretations of 'Ruler' for art 181(2) and arts 182 and 183 of the Federal Constitution — Whether purposive approach to be taken — Interpretation Acts 1948 and 1967 s 17A*

Words and Phrases — *'Ruler' — Federal Constitution art 160*

On 6 May 1998, the plaintiff, the Regent of the State of Selangor, filed a writ of summons and statement of claim at the High Court against the defendants. The defendants then filed their defence and counterclaim. Subsequently, the plaintiff was appointed Regent of Selangor to exercise the functions as 'Sultan' when the Regent's father, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed to the throne as the 11th Yang di-Pertuan Agong. This was a reference to the Federal Court by the High Court pursuant to s 84 of the Courts of Judicature Act 1964 in respect of the constitutional question of whether the plaintiff was a 'Ruler' for the purposes of arts 181, 182 and 183 of the Federal Constitution ('the Constitution'), having regard to the definition of the word 'Ruler' in art 160 of the Constitution.

Held:

(1) The amendment to art 181(2) and for that matter the introduction of arts 182 and 183 into the Constitution by the Constitution (Amendment) Act 1993 (Act A848) in no way altered the construction or meaning of 'Ruler' determined by the Federal Court in *Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Aiwi bin Syed Idrus* [1981] 1 MLJ 2. The amendment to art 181(2) altered the consequence by taking away the immunity of the Ruler from being sued or charged and stipulates that such proceedings shall only be brought in the

* *[Ed Note: The judgment of Haidar FCJ in this case was received by us earlier and reported in [2002] 2 MLJ 11. This judgment of Denis Ong JCA was only received recently and subsequent to our receipt of Haidar FCJ's judgment. Hence this report. Any inconvenience caused is regretted.]*

Special Court established under Part XV of the Constitution (see p 299C–D).

(2) The Regent's appointment was for the Sultan and as the representative of the Sultan 'and in accordance with the laws of the Constitution to do, exercise and perform all acts, rights and duties falling to be done, exercised and performed by the Ruler of the State'. Further, such appointment took effect from 24 April 1999 and for the duration that the Sultan was holding the office of Yang Di-Pertuan Agong. In such representative capacity the Regent, like the Sultan exercises the functions of the Sultan under the state constitution or any state law in accordance with and on the advice of the State Executive Council (the Majlis Mesyuarat Kerajaan Negeri ('MMKN')) or a member thereof, which advice the Regent is bound to accept and act in accordance therewith. In his official capacity the Regent like the Sultan can be sued in name only, not in the Special Court, but in the courts established under art 121 of the Constitution as the act of the Regent like that of the Sultan is deemed to be the act of the state government. More appropriately, the state government is the party to any such proceeding in those courts and not the Sultan or Regent. It will thus be seen that 'Ruler' in the sense defined in limb (b) of art 160(2) really means the Ruler (and likewise the Regent) acting not personally but on the advice of the MMKN that is, the state government (see pp 299F–300A).

(3) It was a fact agreed between the parties that the said suit commenced well before the appointment of the plaintiff as Regent. It follows from this that they were commenced in his personal and not in his official capacity acting in accordance with or on the advice of the MMKN of Selangor or a member thereof. Thus, there was no question of the application of art 160(2) of the Constitution to the facts of this case. Otherwise, the said suit would have been in the name of the state government of Selangor in accordance with the Government Contracts Act 1949 and the institution of civil proceedings could only have been in the High Court, taking into account the value of the subject matter, and governed by the Government Proceedings Act 1956 (see p 300A–D).

[Bahasa Malaysia summary

Pada 6 Mei 1998, plaintif, Pemangku Raja Negeri Selangor, telah memfailkan satu writ saman dan pernyataan tuntutan di Mahkamah Tinggi terhadap defendan-defendan. Defendan-defendan kemudiannya telah memfailkan pembelaan dan tuntutan balas mereka. Berikutan itu, plaintif telah dilantik sebagai Pemangku Raja Negeri Selangor untuk melaksanakan tanggungjawab-tanggungjawab sebagai 'Sultan' apabila bapa Pemangku Raja, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin

A Alam Shah dinaikkan takhta sebagai Yang di-Pertuan Agong ke-11. Ini adalah satu rujukan kepada Mahkamah Persekutuan oleh Mahkamah Tinggi menurut s 84 Akta Kehakiman Mahkamah 1964 berhubung persoalan perlembagaan tentang sama ada plaintif adalah seorang 'Ruler' bagi tujuan perkara-perkara 181, 182 and 183 Perlembagaan Persekutuan ('Perlembagaan'), sehubungan dengan
B tafsiran 'Ruler' dalam perkara 160 Perlembagaan.

Diputuskan:

C (1) Pindaaan kepada perkara 181(2) dan bagi maksud tersebut pengenalan-pengenalan kepada perkara-perkara 182 dan 183 dalam Perlembagaan melalui Akta A848 tidak dalam apa carapun mengubah pembentukan atau maksud 'Ruler' yang diputuskan oleh Mahkamah Persekutuan dalam *Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Aiwi bin Syed Idrus* [1981]
D 1 MLJ 2. Pindaaan kepada perkara 181(2) telah mengubah keputusan tersebut dengan mengambil balik kekebalan Pemangku Raja daripada disaman atau dituduh dan memperuntukkan bahawa prosiding sedemikian hanya boleh dimulakan dalam Mahkamah Khas yang dibentuk di bawah Bahagian XV Perlembagaan (lihat ms 299C–D).

E (2) Perlantikan Pemangku Raja adalah bagi pihak Sultan dan sebagai wakil Sultan 'and in accordance with the laws of the Constitution to do, exercise and perform all acts, rights and duties falling to be done, exercised and performed by the Ruler of the State'. Tambahan pula, perlantikan tersebut mula berkuatkuasa mulai
F 24 April 1999 dan untuk tempoh di mana Sultan memegang takhta sebagai Yang Di-Pertuan Agong. Dalam kapasiti sebagai wakil Pemangku Raja, seperti Sultan, melaksanakan tanggungjawab-tanggungjawab Sultan di bawah perlembagaan negeri atau apa-apa undang-undang negeri menurut atau atas nasihat Majlis Mesyuarat Kerajaan Negeri ('MMKN') atau
G seorang ahli, yang menasihati Pemangku Raja adalah terikat untuk menerima dan bertindak sebagaimana yang diperuntukkan. Dalam kapasiti rasmi beliau, Pemangku Raja seperti Sultan boleh disaman atas nama sahaja, bukan dalam Mahkamah Khas, tetapi dalam mahkamah-mahkamah yang ditubuhkan di bawah perkara
H 121 Perlembagaan kerana tindakan Pemangku Raja seperti Sultan boleh dianggap sebagai tindakan kerajaan negeri. Lebih tepat lagi, kerajaan negeri adalah pihak kepada mana-mana prosiding demikian dalam mahkamah dan bukan Sultan atau Pemangku Raja. Oleh itu, bolehlah dilihat bahawa 'Ruler' seperti yang ditafsirkan dalam cabang (b) perkara 160(2) sebenarnya
I bermaksud Sultan (dan begitu juga Pemangku Raja) bertindak bukan secara peribadi tetapi atas nasihat MMKN iaitu, kerajaan negeri (lihat ms 299F–300A)).

(3) Ia adalah fakta yang dipersetujui antara pihak-pihak bahawa guaman tersebut telah bermula lama sebelum perlantikan plaintif sebagai Pemangku Raja. Berikutan itu ia telah dimulakan dalam kapasiti peribadi beliau dan bukan kapasiti rasmi beliau yang bertindak menurut atau atas nasihat MMKN Selangor atau seorang ahli. Oleh itu, tidak ada persoalan tentang pemakaian perkara 160(2) Perlembagaan kepada fakta-fakta kes ini. Sebaliknya, guaman tersebut adalah di atas nama kerajaan negeri Selangor menurut Akta Kontrak Kerajaan 1949 dan prosiding sivil tersebut hanya boleh dimulakan di Mahkamah Tinggi, dengan mengambilkira kepentingan perkara pokok, dan dikawal oleh Akta Prosiding Kerajaan 1956 (lihat ms 300A–D).]

Notes

For cases on the Federal Constitution, see 3 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1404–1405.

For cases on the purposive approach, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1538–1563.

Cases referred to

Chor Phaik Har v Farlim Properties Sdn Bhd [1994] 3 MLJ 345 (refd)

Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29 (folld)

Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzam Shah [1996] 1 MLJ 617 (refd)

Lam Kong Co Ltd v Thong Guan Co Ptd Ltd [2000] 4 MLJ 1 (folld)

Northman v Barnet Council [1978] 1 WLR 221 (refd)

Pepper v Hart [1993] 1 All ER 42 (refd)

Stephen Kalong Ningkan v Tun Abang Hj Openg & Tawi Sli [1967] 1 MLJ 46 (refd)

Teh Cheng Poh v PP [1979] 1 MLJ 50 (refd)

United Hokkien Cemeteries, Penang v Majlis Bandaran, Pulau Pinang [1979] 2 MLJ 121 (folld)

Legislation referred to

Constituion of State of Selangor 1959 arts 21(4), 55(1), (1A)
Courts of Judicature Act 1964 ss 68(1)(a), 84(2)
Federal Constitution arts 3, 34, 121, 160(1), (2), 181, 182, 183
Government Contracts Act 1949
Government Proceedings Act 1956
Interpretation (Amendment) Act 1993 [Sing] s 2
Interpretation Acts 1948 and 1967 s 17A

Appeal from: Suit No D1–22–1350 of 1998 (High Court, Kuala Lumpur)

A *Low Chi Cheng* (*Wong Yoke Ping* with her) (*Lim Kian Leong & Co*) for the plaintiff.

Dato' Bastian Vendargon (*Philip Chai* and *Dhayana Shila* with him) (*Soo Thien Ming & Nashrah*) for the defendants.

Dato' Abdul Aziz bin Abdul Rahim (*Syed Marzidy bin Syed Marzuki* with him) (Senior Federal Counsel) watching brief for the Attorney General.

B

Denis Ong JCA: This case comes before the Federal Court in the form of a special case referred by the High Court in Kuala Lumpur pursuant to s 84 of the Courts of Judicature Act 1964 for our decision on four questions namely:

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(1) whether the plaintiff, the Regent of the State of Selangor, who is appointed to exercise the functions as 'Sultan' is a 'Ruler' for the purposes of arts 181, 182 and 183 of the Federal Constitution ('the Constitution') (as amended by the Constitution (Amendment) Act 1993 ('Act A848')) having regard to the aforesaid provisions and the D interpretation of 'Ruler' as defined in art 160 of the Constitution?

(2) if the answer to (1) is in the affirmative, does the Special Court have exclusive jurisdiction to adjudicate on the plaintiff's claim to the exclusion of the High Court of Malaya?

(3) if the answer to (1) or (2) above is in the affirmative does the Special E Court have exclusive jurisdiction to adjudicate on the defendants' counterclaim to the exclusion of the High Court of Malaya (subject to the Attorney-General's consent pursuant to art 183 of the Constitution)?

(4) if the answer to (2) or (3) above is in the negative do the ordinary F courts which are constituted under Part IX of the Constitution have jurisdiction to adjudicate on the plaintiff's claim and the defendants' counterclaim?

We heard submissions on 22 October 2001 from both learned counsel Ms Low Chi Cheng for the appellant ('the plaintiff') and Dato' Bastian G Vendargon for the respondents ('the defendants') and also queried Dato Abdul Aziz b Abdul Rahim, Senior Federal Counsel on certain points. He was present to hold a watching brief for the Attorney General ('AG'). The submissions were confined solely to question (1). At the conclusion of the hearing, we unanimously answered it in the negative. I now give my reasons.

H The facts agreed in the High Court between the parties to assist the Federal Court in deciding those questions which have arisen are as follows:

(1) on 6 May 1998, the plaintiff filed a writ of summons and statement of claim against both defendants in Suit No D1-22-1350-1998 ('the said suit'). The defendants filed a defence and counterclaim on 3 July I 1998 which was subsequently amended by court order dated 7 January 1999. A reply and defence to the counterclaim was filed on 17 July 1998.

(2) on 24 April 1999, the plaintiff was appointed Regent of Selangor to exercise the functions as 'Sultan' when His Highness's father, DYMM Sultan Salahuddin Abdul Aziz Shah Ibni Al-Marhum Sultan Hisamuddin Alam Shah was appointed to the throne as the 11th Yang Di-Pertuan Agong.

(3) on 27 July 1999, the plaintiff's solicitors, Messrs Lim Kian Leong & Co, wrote to the AG's Chambers to seek advice in respect of the further conduct of this matter. A response was received vide the letter dated 7 September 1999 from the AG's Chambers stating that in the light of His Highness's appointment as 'Regent', further action is to be commenced in the Special Court and the consent of the AG will be required for the same. On 30 September 1999, the defendants' solicitors Messrs Soo Thien Ming & Nashrah wrote to the AG's Chambers for consent that the defendants continue their counterclaim in the Special Court.

(4) on 13 October 2000, both parties were granted audience with YB Tan Sri Datuk Sri Peguam Negara and issues of jurisdiction, among others, were discussed.

(5) on 4 November 2000, the defendants through their solicitors wrote to the AG's Chambers expressing their reasons why the matter should continue in the High Court and not in the Special Court.

(6) on 15 November 2000, a letter was issued by the AG's Chambers indicating that this issue be determined by the High Court of Malaya.

(7) the defendants subsequently disagreed that the matter should proceed in the Special Court. The plaintiff filed two applications, one to withdraw the claim in the High Court with liberty to file afresh in the Special Court ('application to withdraw') and the other to strike out the defendants' counterclaim. On 2 April 2001, the application to withdraw was heard by the learned senior assistant registrar and on 4 April 2001, she allowed the plaintiff's application to withdraw with costs to be taxed ('the said order'). Both parties lodged their appeals against the said order.

(8) on 30 July 2001, the judge of the High Court by consent of the parties ordered that a reference be made to the Federal Court under s 84 of the Courts of Judicature Act 1964 of the four questions.

(9) the application to strike out the counterclaim, the appeals by both parties against the said order are pending and were stayed in the light of the reference.

(10) on 9 July 2001, the plaintiff filed their claim in the Special Court and the defendants entered conditional appearance on 19 July 2001.

(11) this matter was also stayed pending the reference to the Federal Court.

In respect of agreed fact (1), it is noteworthy from the statement of claim in the record of appeal that the cause of action was in contract based on an agreement in writing dated 10 July 1995 ('the SPA') entered into between

A the plaintiff as vendor and the first and second defendants as purchasers for the sale and purchase of certain shares (allegedly identified in the SPA) for the purchase price of RM100m. The claim of the plaintiff was for RM35m being the unpaid balance of the purchase price and also for interest and cost. The amended counterclaim of the defendants was for RM25m based on a supplemental agreement dated 15 January 1996 ('the SA'). Neither the B SPA nor the SA were included as part of the record of appeal.

In connection with agreed fact (2), it is noted that the appointment of the plaintiff as Regent was published in the Government of Selangor Gazette (Sel PU 19/99), a copy of which was produced at the hearing before us by the senior federal counsel at my request. Such appointment took C effect on 24 April 1999. The text in English of Sel PU 19/99 so far as is relevant reads as follows:

> ... By the Grace of Allah, His Royal Highness SALAHUDDIN ABDUL AZIZ SHAH AL-HAJ IBNI ALMARHUM SULTAN HISAMUDDIN ALAM SHAH AL-HAJ, ... OF THE STATE OF SELANGOR AND ALL ITS DEPENDENCIES, SULTAN AND RULER:
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> D
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> WHEREAS by art XXI of the First Part of the Laws of the Constitution of Selangor 1959, it is provided, inter alia, that if His Royal Highness the Sultan is selected to the office or exercises the functions of the Yang di-Pertuan Agong, He shall appoint a Regent or ... to exercise His functions as Sultan:
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> E
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> AND WHEREAS the Conference of Rulers at its 182nd Meeting on 26 February 1999 ... has elected His Royal Highness the Sultan to be the 11th Yang di-Pertuan Agong:
>
> AND WHEREAS His Royal Highness the Sultan will be holding the office of Yang di-Pertuan Agong commencing on 26 April 1999:
>
> NOW, THEREFORE, in accordance with the provisions of art XXI of F ... 1959, His Royal Highness the Sultan has been graciously pleased to appoint DULI YANG TERAMAT MULIA TENGKU IDRIS SHAH IBNI SULTAN SALAHUDDIN ABDUL AZIZ SHAH AL-HAJ ... RAJA MUDA SELANGOR, to be REGENT during the period that His Royal Highness the Sultan is holding the office of Yang di-Pertuan Agong, for HIM as His representative and in accordance with the Laws of the Constitution to do, G exercise and perform all acts, rights and duties falling to be done, exercised and performed by the Ruler of the State.
>
> GIVEN at Istana Alam Shah, Klang this 24 April 1999 ....
>
> By His Royal Highness's Command.
>
> DATO SERI (DR) HAJI ABU HASSAN
> BIN HAJI OMAR,
> H Menteri Besar,
> Selangor.

On agreed fact (3), the plaintiff's solicitors queried: (i) whether the said suit should properly be brought in or be transferred to the Special Court as provided under art 182(2) of the Constitution; and (ii) whether the consent I of the AG under art 183 of the Constitution must be obtained by the defendants before making a counterclaim against the plaintiff. The basis for such queries was that in the light of his appointment as Regent the plaintiff

was, to all intents the 'Ruler'. These queries were addressed by letter dated 27 July 1999 to the AG's Chambers by the plaintiff's solicitors and copied to the solicitors for the defendants. Without copying to the latter, the AG's advice dated 7 September 1999 to the former, on both queries was in the affirmative. Having been informed by the plaintiff's solicitors of such advice, the defendants' solicitors requested the AG in writing dated 30 September 1999 for the requisite consent. The AG's reply dated 18 September 1999 was received by the defendants' solicitors on 24 November 1999. Here, it is observed that the date 18 September 1999 was obviously mistaken having regard to para 2 of that reply which specifically referred to the letter dated 30 September 1999. The reply must have been made at any time between 30 September 1999 and 24 November 1999. In any event, the consent in writing was not forthcoming in the reply; instead, the defendants' solicitors were informed that under art 183 of the Constitution, it should have been obtained before (and not after) the counterclaim was made and suggested a meeting of the parties with the AG. The purpose of bringing these out is to give a fuller picture of what is comprehended by agreed fact (3).

On agreed fact (5), the solicitors' letter recalled that the AG informed at that meeting that since the plaintiff was then performing duties as 'Regent' the said Suit should appropriately be tried in the Special Court in accordance with the Federal Constitution and advised both solicitors present to take appropriate action. By that letter, the defendants' solicitors openly stated the defendants' disagreement with such advice for the following reasons:

(a) at the time the claim and counterclaim was filed, the plaintiff was not yet a Regent. Thus, he was within the jurisdiction of the High Court.

(b) Though performing the duties and functions of a Regent, on 4 November 2000, he was not a 'Ruler' for the purpose of art 181(2) of the Constitution. The judgment of Salleh Abas FJ (as he then was) in *Dato' Menteri Othman bin Baginda & Anor v Dato Ombi Syed Alwi bin Syed Idrus* [1981]1 MLJ 29 at p 35E was cited as authority for this point.

The purpose of bringing these out was to indicate the views expressed by the AG at the meeting referred to in agreed fact (4) and also the reasons expressed by the defendants' solicitors for their disagreement therewith.

On question (1) of this reference, Ms Low makes the following points namely,

(a) that the definition of 'Ruler' in art 160(1) of the Constitution is a wider definition in the sense that it refers to both the incumbent Ruler and the Regent appointed to exercise the functions as Sultan.

(b) The only instances where such wider definition is excluded from application are those specifically mentioned in limb (b) of that definition, that is to say, art 181(2) of the Constitution, the third schedule and the fifth schedule to the Constitution. Consequently, that definition does not apply to 'Ruler' in art 181(2).

(c) Since limb (b) is silent on arts 181(1), 182 and 183 of the Constitution, she says that the wider definition applies to them. So applied she contends that the plaintiff, a Regent exercising the functions as Sultan is a 'Ruler' for the purposes of arts 181(1), 182 and 183 of the Constitution but not a 'Ruler' for the purpose of art 181(2) .

In the premises, she submits that the answer to question (1) should be in the affirmative.

Dato' Bastian Vendargon observes that:

(a) the definition of 'Ruler' in art 160(2) is retained without amendment introduced by Act A848;

(b) art 181(2) has been amended by Act A848 to include the words 'except in the Special Court established under Part XV'; and

(c) art 182(2) has been included by Act A848 and provides for 'Any proceedings by or against ...'

He says that ambiguities arise from a reading of these provisions: firstly, a Regent exercising the functions of a Sultan is not a 'Ruler' for the purposes of art 181(2) and thus can be sued in the ordinary courts, however, for purposes of art 182(2), he is a 'Ruler: and shall sue or be sued in the Special Court; secondly, if one wishes to sue the Regent, which provision will prevail - art 181(2) read with the definition of 'Ruler' in art 160(2), or arts 182(2) and 183?

He submits that the literal interpretation ought not to be used as it would lead to undesirable conclusions or absurdities in that:

(i) proceedings by the Regent shall be instituted in the Special Court under art 182(2) whilst proceedings against the Regent may be instituted in the ordinary courts as the Regent is not a 'Ruler' for the purposes of art 181(2). Accordingly, the determination of the claim in the present case would fall within the jurisdiction of the Special Court whilst the determination of the counterclaim which is founded on the same facts as the claim would fall within the jurisdiction of the High Court. He queries what if two different decisions are reached on the same facts that arise from the same transaction.

(ii) The Regent does not require the consent of the AG to institute an action but the defendants may require such consent. On this point he drew attention to art 183 compared with art 181(2).

(iii) The Regent may cease to exercise the function of the Ruler when his father resumes the role. In that event he queries whether his claim should then be transferred from the Special Court to the ordinary courts.

Instead he submits that the mischief rule/purposive interpretation ought to be used to interpret the relevant provisions of the Constitution in answering question (1) of the reference for the following reasons:

(1) that the mischief that Parliament sought to rectify by Act A848 was to take away the immunity of the Rulers from legal proceedings and to establish the Special Court to deal with all matters by and against the Rulers. A

(2) that it was never the intention of Parliament to extend the immunity of the Regents or persons exercising the functions of the Ruler who never enjoyed immunity from legal proceedings under the original provisions of the Constitution in the first place. B

(3) that the purpose of Parliament was never to grant the privileges of the Special Court procedure to the Regent or persons exercising the functions of the Ruler who never enjoyed the immunity under the original provisions of the Constitution. C

(4) that the purpose of the qualification in the definition of 'Ruler' in art 160 was to ensure that immunity from legal proceedings was never to be extended to Regents exercising the functions of the Rulers.

In the premises, he submits that the answer to question (1) ought to be in the negative. D

Learned senior federal counsel draws attention to arts 3 and 34 of the Constitution and expresses the view that question (1) should be answered in the negative.

There is common ground between the parties on a point of law, namely that the definition of 'Ruler' in art 160(2) does not apply to art 181(2). The query raised by point (c) of Ms Low's submission is, does that definition apply to art 181(1). She says it does. Dato' Bastian Vendargon, however, is silent on this point. Whether that definition applies to art 181(1) or (2) is a point of construction which has been canvassed by the Federal Court in *Othman* in the judgment of Salleh Abas FJ. He construes that the definition of 'Ruler' in art 160(2) is inapplicable for the purpose of interpreting 'Ruler' in art 181 be it cll (1) or (2) because the context of art 181 requires otherwise and that definition is a functional one which has no bearing on the personal status of the Ruler at all. That construction is shared by Suffian LP (as he then was) and Hashim Yeop A Sani J (as he then was) in separate judgments delivered in the same case. Consequently, in *Othman*, on the issue of law, ie whether a ruling chief, an Undang, is a Ruler, Salleh Abas FJ decided that a ruling chief is a Ruler as regards performance of functions and power but not a Ruler for the purpose of judicial immunity under art 181(2). Hashim Yeop A Sani J supports that decision. There seems to be implicit approval by Suffian LP when he expresses the view that he is doubtful that art 181 gives the ruling chief legal immunity at all although he makes it clear that he is undecided on that point but is prepared to assume for the purpose of that appeal that the ruling chief enjoys legal immunity in his personal capacity to the extent that he is sovereign. E F G H

The question then is who is 'Ruler' in the context of art 181(2). According to Salleh Abas FJ in *Othman* at p 35B, F, art 181(1) provides the answer to art 181(2) that is to say, he belongs to a royal ancestory and possesses the four attributes namely, sovereignty, prerogatives, powers and I

jurisdiction. In short, 'Ruler' in art 181(2) means Ruler in the full sense of that word, both functionally and status wise. The attribute which differentiates a Ruler from the ruling chief status wise is the attribute of sovereignty which a ruling chief lacks. That attribute which a Ruler possesses is the basis of immunity from proceedings in his personal capacity.

The query here is whether the construction of law by Salleh Abas FJ still stands in the light of the amendments to the Federal Constitution effected by Act A848. Act A848 makes no amendment to the definition of 'Ruler' in art 160(2) or art 181(1). They remain intact. Thus there is no reason to depart from his construction and in my view his construction still holds good. Act A848 amends art 181(2) by inserting the words 'except in the Special Court established under Part XV after 'capacity'. Article 181(2) in its unamended form does not define a Ruler but deals rather with the consequence of one being a Ruler namely, immunity from proceedings in any court in his personal capacity (see *Othman* at p 34H). As I see it, the amendment to art 181(2) and for that matter the introduction of arts 182 and 183 into the Constitution by Act A848 in no way alters the construction or meaning of 'Ruler' determined by the Federal Court in *Othman* which should apply to them uniformly as well. The amendment to art 181(2) alters the consequence by taking away the immunity of the Ruler from being sued or charged and stipulates that such proceedings shall only be brought in the Special Court established under Part XV (see *Faridah Begum bte Abdullah v Sultan Haji Ahmad Shah Al Mustain Billah Ibni Almarhum Sultan Abu Bakar Ri'Ayatuddin Al Mu'Adzam Shah* [1996] 1 MLJ 617 (Special Court) at p 622B, per Eusoff Chin CJ).

The question in our present case is whether the plaintiff a Regent, appointed to exercise the functions as Sultan, is a 'Ruler' for the purpose of art 181(2). Bearing in mind that 'Ruler' in art 181(2) means Ruler in the full sense of that word that question entails a consideration of the Regent in his official and personal capacities.

His appointment as is clear from the operative part of Sel PU 19/99 is for the Sultan and as the representative of the Sultan 'and in accordance with the Laws of the Constitution to do, exercise and perform all acts, rights and duties falling to be done, exercised and performed by the Ruler of the State'. Further, such appointment takes effect from 24 April 1999 and for the duration that the Sultan is holding the office of Yang Di-Pertuan Agong. In such representative capacity the regent, like the Sultan exercises the functions of the Sultan under the state constitution or any state law in accordance with and on the advice of the State Executive Council (the Majlis Mesyuarat Kerajaan Negeri ('MMKN')) or a member thereof, which advice the Regent is bound to accept and act in accordance therewith (see art 55(1) and (1A) of the Constitution of State of Selangor. In his official capacity, the Regent, like the Sultan can be sued in name only, not in the Special Court, but in the courts established under art 121 of the Constitution as the act of the Regent like that of the Sultan is deemed to be the act of the state government. More appropriately, the State Government is the party to any such proceeding in those courts and not the Sultan or Regent (see *Othman*, per Salleh Abas FJ at p 35D and *Stephen Kalong*

Ningkan v Tun Abang Hj Openg & Tawi Sli [1967] 1 MLJ 46 (HC) and *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50 (PC) at p 52C–F). It will thus be seen that 'Ruler' in the sense defined in limb (b) of art 160(2) really means the Ruler (and likewise the Regent) acting not personally but on the advice of the MMKN that is, the State Government.

It is a fact agreed between the parties that the SPA and the SA were entered into and the said suit commenced well before the appointment of the plaintiff as Regent, a reason expressly stated by the solicitors for the defendants for disagreeing with the views of the AG. It follows from this that they were entered into or commenced in his personal and not in his official capacity acting in accordance with or on the advice of the MMKN of Selangor or a member thereof. Thus, there is no question of the application of art 160(2) to the facts of this case. Otherwise, the SPA or the SA and the said Suit would all have been in the name of the State Government of Selangor in accordance with the Government Contracts Act 1949 and the institution of civil proceedings could only have been in the High Court, taking into account the value of the subject matter, and governed by the Government Proceedings Act 1956.

Applying the construction of Salleh Abas FJ in *Othman*, the Regent is in my view a 'Ruler' of Selangor in the functional sense as regards performance of functions and power with effect from 24 April 1999 but not one before that date. Before 24 April 1999, the Sultan of Selangor was such a Ruler.

It is a fact that the plaintiff belongs to a royal ancestory. He is a Tengku and Raja Muda of Selangor and that status remains with him during his regency. Status wise, he is not on an equal footing with his father who is both the Sultan of Selangor and the 11th Yang Di-Pertuan Agong.

As the reigning Sultan of Selangor, he possesses the attribute of sovereignty and not the Regent.

Thus, applying the construction and meaning of 'Ruler' by Salleh Abas FJ in *Othman*, the Regent is not a Ruler for the purposes of art 181, be it cll (1) or (2), art 182 and art 183. 'Ruler' in the context of those articles would properly have meant the Sultan of Selangor.

For all these reasons stated, I answered question (1) of this reference in the negative.

Order accordingly.

Reported by Peter Ling